



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Ms. Mary Kay Fischer
City Attorney
City of Texarkana
P.O. Box 1967
Texarkana, Texas 75504

OR94-105

Dear Ms. Fischer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 22396.

The City of Texarkana (the "city") has received a request for information relating to a closed criminal investigation. Specifically, the requestor seeks "a copy of the confession given by Barbara Danner regarding an alleged theft at Heritage Nursing Home." You advise us that the city police department's investigation of the alleged theft has been closed. You have submitted the requested information to us for review and seek to withhold it under section 552.108 of the act.

Section 552.108 excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . .
[and]
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

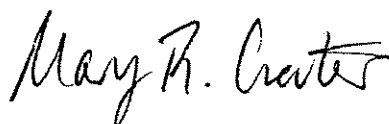
¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Acts 1993, 73d Leg., ch. 268, § 1, at 604. Traditionally, when applying section 552.108, our office has distinguished between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, this section excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). Here, however, the case is no longer under active investigation. As a general matter, once a case is closed, information may be withheld under section 552.108 only if the law enforcement agency demonstrates or the information demonstrates on its face that its release will unduly interfere with law enforcement and crime prevention. *See* Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444, 434 (1986); 366 (1983) at 3; 216 (1978) at 3; (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). This office considers the applicability of the section 552.108 exception on a case-by-case basis. Open Records Decision Nos. 434 (1986) at 2; 287 (1981) at 1-2. Whether the statute of limitations has run in a particular case is a factor this office has considered in determining the applicability of section 552.108. Open Records Decision No. 408 (1984) at 7.

We have examined the information submitted to us for review. We conclude that in this case the mere fact that the statute of limitations has not expired is not sufficient grounds for excepting the requested information from required public disclosure under section 552.108. In fact, you state that the victim's family does not wish to press charges. You have not demonstrated how release of this information would unduly interfere with law enforcement and crime prevention. Moreover, the submitted documents do not on their face demonstrate that their release would unduly interfere with law enforcement and crime prevention. We conclude, therefore, that you may not withhold the requested information under section 552.108 of the act and must release it in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 22396
ID# 22413

cc: Mr. Sherman A. Kusin
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(w/o enclosures)